

Before the  
Administrative Hearing Commission  
State of Missouri

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MO. OFFICE  
ATTORNEY GENERAL

STATE COMMITTEE OF  
PSYCHOLOGISTS,

Petitioner,

vs.

JOHN SMALL,

Respondent.

No. 03-1964 PS

CONSENT ORDER

The licensing authority filed a complaint. Section 621.045, RSMo 2000, gives us jurisdiction.

On October 12, 2004, the parties filed a "Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Committee of Psychologists, and Joint Disciplinary Order With Joint Stipulated Findings of Fact and Conclusions of Law." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 337.035.2(6) and (10), RSMo 2000. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo 2000.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110, RSMo 2000.

No statute authorizes us to determine whether the agency has complied with the provisions of section 621.045.3. RSMo 2000. We have no power to superintend agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on November 2, 2004.

JUNE STRIEGEL DOUGHTY  
Commissioner

BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

**FILED**  
OCT 12 2004  
ADMINISTRATIVE HEARING  
COMMISSION

STATE COMMITTEE OF PSYCHOLOGISTS, )

Petitioner, )

v. )

JOHN SMALL, )

Respondent. )

No. 03-1964 PS

JOINT MOTION FOR CONSENT ORDER, JOINT STIPULATION OF FACTS,  
WAIVER OF HEARINGS BEFORE THE ADMINISTRATIVE HEARING  
COMMISSION AND STATE COMMITTEE OF PSYCHOLOGISTS,  
AND JOINT DISCIPLINARY ORDER WITH JOINT STIPULATED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission ("AHC"), 1 CSR 15-3.440(3)(C), and pursuant to the terms of § 536.060, RSMo, as it is made applicable to the AHC by § 621.135, RSMo, the parties waive the right to a hearing and decision in the above-captioned case by the AHC. In addition, the parties waive the right to a disciplinary hearing before the State Committee of Psychologists ("Committee") pursuant to § 621.110, RSMo. The parties jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that he is aware of and understands the various rights and privileges afforded to him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses

appearing at the hearing against him; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the complaint pending against him; the right to a ruling on questions of law by the AHC; the right to a disciplinary hearing before the Committee at which time he may present evidence in mitigation of discipline; the right to a claim for attorney's fees and expenses; and the right to obtain judicial review of the decisions of the AHC and the Committee. Being aware of these rights provided him by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights as they apply to him, freely enters into this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and the State Committee of Psychologists, and Joint Disciplinary Order with Joint Stipulated Findings of Fact and Conclusions of Law ("Joint Stipulation") and agrees to abide by the terms of this document as they pertain to him.

Respondent acknowledges that he has received a copy of the Complaint in this cause which was filed with the AHC on October 1, 2003. Respondent stipulates that the factual allegations contained in this Joint Stipulation are true and stipulates with the Committee that his license, No. 00910, is subject to disciplinary action by the Committee in accordance with the provisions of Chapter 621, RSMo, and § 337.035, RSMo.

Based upon the foregoing, the Committee and Respondent jointly stipulate to the following findings of fact and conclusions of law in lieu of the facts as alleged in the Complaint and request that the AHC adopt as its own the Joint Stipulated Findings of Fact and the Joint Stipulated Conclusions of Law set forth below.

## JOINT PROPOSED FINDINGS OF FACT

1. The State Committee of Psychologists ("Committee") is an agency of the state of Missouri created and established pursuant to § 337.050, RSMo, for the purpose of executing and enforcing the provisions of Chapter 337, RSMo.
2. Respondent, John Small ("Licensee"), is licensed by the Committee as a psychologist, license No. 00910. Licensee's license is, and was at all times relevant herein, current and active.
3. Licensee maintains a private psychology practice at Eastgate Building, (known as Stephens Lake Building), Suite 315, 2100 East Broadway, Columbia, Missouri.
4. Beginning sometime prior to December 2001 until at least February 12, 2003, Lin Ann Townsend ("Townsend") maintained a private psychotherapy practice in the same building as Licensee.
5. During the time period referenced above, Townsend held herself out as a psychotherapist.
6. During the time period referenced above, Townsend was not authorized to use the designation "Psychotherapist" as that term had come to be restricted by statute to use by licensed psychologists, licensed professional counselors, and licensed psychiatrists.
7. During the time period referenced above, Townsend was not licensed as a psychologist.
8. During the time period referenced above, Townsend did not possess any license as a mental health professional.
9. During the time period referenced above, Licensee provided supervision and consultation to Townsend.

10. During the time period referenced above, Licensee referred clients to Townsend.
11. During the time period referenced above, Licensee and Townsend provided co-therapy to individual clients.
12. During the time period referenced above, Licensee and Townsend provided co-therapy to couples.
13. During the time period referenced above, Licensee received payment for the co-therapy and split the fee equally with Townsend.
14. During the time period referenced above, Licensee knew that Townsend was not licensed as a psychologist or other mental health professional.
15. During the time period referenced above, Licensee did not know that Townsend's use of the designation "Psychotherapy" constituted unlicensed practice of psychology.
16. Licensee did not report Townsend's conduct to the Committee, because Licensee was unaware of any professional misconduct on the part of Townsend.
17. Licensee's failure to report Townsend's conduct to the Committee was not willful or with wrongful intention.
18. After reading the statute concerning the restrictions of the use of terms, such as "Psychotherapy", Licensee and Townsend met with Loree Kessler, the Executive Director of the Missouri Committee for Professional Counselors on February 10, 2003, and learned that Townsend was not authorized to practice in the manner in which she was practicing. February 12, 2003 is the date on which Townsend closed her private practice in immediate compliance.

## JOINT PROPOSED CONCLUSIONS OF LAW

19. Licensee's conduct as described herein violates 4 CSR 235-5.030(12), which states in relevant parts:

(A) Aiding Unauthorized Practice. The psychologist shall not aid or abet another person in misrepresenting his/her professional credentials or in illegally engaging in the practice of psychology.

.....

20. Cause exists for the Committee to take disciplinary action against Licensee's license pursuant to § 337.035, which states in relevant part:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

.....

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

.....

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not registered and currently eligible to practice as provided in this chapter;

## JOINT DISCIPLINARY ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Committee in this matter under the authority of § 621.110, RSMo 2000. This disciplinary order will be effective immediately upon the issuance of the Consent Order of the Administrative Hearing Commission without further action by either party:

1. Respondent's psychologist license No. 00910, is hereby placed on PROBATION for a period of two (2) years (the disciplinary period). During the disciplinary period, Respondent must adhere to the following terms and conditions:

### I. GENERAL REQUIREMENTS

A. During the period of probation, Respondent shall not provide post-graduate supervised experience leading to licensure for psychologists, professional counselors or social workers. Respondent may provide supervision to students enrolled in a program for psychologists, professional counselors, or social workers so long as such supervision is limited to marital and family therapy and Respondent maintains a current and active license as a marriage and family therapist in the state of Missouri and is otherwise allowed to provide such supervision pursuant to his licensure as a marriage and family therapist. Respondent may perform services in connection with a practicum; however, Respondent shall inform all employers, hospitals, and educational institutions with which he performs services with practicum students as a psychologist that his work as a psychologist is under probation by the State Committee of Psychologists. Respondent's teaching of therapy skills is outside the purview of this agreement. Individual universities and their departments are

free to negotiate such teaching with Respondent when they deem it to best serve the educational needs of their students.

B. Respondent must keep the Committee apprised at all times, in writing, of Respondent's current home and work addresses and telephone numbers.

C. Respondent is required to pay to the Committee, in a timely fashion, all requisite fees required by law to renew and keep current Respondent's psychology license in Missouri.

D. Respondent is required to comply with all provisions of Chapter 337, RSMo; the rules and regulations duly promulgated by the Committee; and state and federal criminal laws.

E. Respondent must provide periodic reports of Respondent's compliance with this Joint Stipulation every six months. Reports must be received before March 1 and September 1 of each year. It is Respondent's responsibility to ensure that these reports are provided in a timely manner.

F. At Respondent's expense, Respondent must agree to meet with the Committee at reasonable intervals designated by the Committee.

## II. ETHICS COURSE

Respondent must complete a professional education course on the topic of ethics approved by the State Committee of Psychologists. Such course must be taken in a department of psychology from a program accredited by the American Psychological Association ("APA") for graduate credit of no less than three (3) semester hours. The Respondent must obtain a grade of B or higher in the course. Readings courses, correspondence courses or independent study courses are unacceptable.



Such course must be started within one year of the effective date of this Joint Stipulation and completed within the disciplinary period..

1. The parties to this Joint Stipulation understand that the Committee will maintain this Joint Stipulation as an open and public record of the Committee as provided in Chapters 337, 610, and 620, RSMo.

2. Upon the determination of the Committee that the Respondent has failed to comply with the terms of this Joint Stipulation, the Committee may revoke Respondent's license or may take such other or additional disciplinary action against Respondent or Respondent's license as the Committee deems appropriate. No order shall be entered by the State Committee of Psychologists pursuant to this paragraph of this consent order without notice and an opportunity for hearing before the Committee in accordance with the provisions of Chapter 536, RSMo.

3. Upon the expiration and successful completion of the period of probation, Respondent's license as a psychologist in Missouri shall be fully restored if all other requirements of law have been satisfied.

4. If the Committee determines that the Respondent has violated a term or condition of this Joint Stipulation, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Committee may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Joint Stipulation in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Joint Stipulation occurred during the disciplinary period, the Committee may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The

Committee retains jurisdiction to hold a hearing to determine if a violation of this Joint Stipulation has occurred.

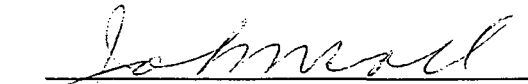
5. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

6. Respondent hereby waives and releases the Committee, its members and any of its employees, agents, or attorneys, including any former committee members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Joint Stipulation. The parties acknowledge that this paragraph is severable from the remaining portions of this Joint Stipulation in that it survives in perpetuity even in the event that any court of law or administrative tribunal deems this Joint Stipulation or any portion thereof void or unenforceable.

IN CONSIDERATION OF THE FOREGOING, the parties consent to the entry of record and approval of this Joint Motion for Consent Order, Joint Stipulation of Facts, Waiver of Hearings Before the Administrative Hearing Commission and State Committee of Psychologists, and Joint Disciplinary Order with Joint Stipulated Findings of Fact and Conclusions of Law and to the

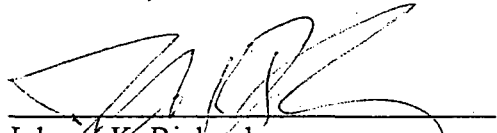
termination of any further proceedings before the Administrative Hearing Commission based upon the Complaint filed by the Petitioner in the above-styled action.

RESPONDENT

  
John Small

Date 10/01/04


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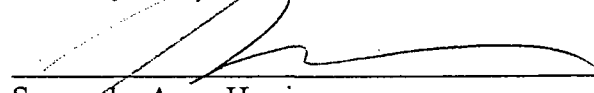
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PETITIONER

  
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Date 10-6-04

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